UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

TODD R.G. HILL, et al.,

Plaintiffs,

v.

THE BOARD OF DIRECTORS, OFFICERS, AND AGENTS AND INDIVIDUALS OF PEOPLES COLLEGE OF LAW, et al.,

Defendants.

No. 2:23-cv-01298-JLS-BFM

INTERIM REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Interim Report and Recommendation is submitted to the Honorable Josephine L. Staton, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

SUMMARY OF RECOMMENDATION

This is a civil rights case filed by a pro se litigant. Plaintiff Todd R.G. Hill makes numerous claims against individuals and entities associated with the Peoples College of Law and the State Bar of California. The District Judge twice before dismissed his complaints as violating Rule 8's requirement of a short and

plain statement of a claim on which relief can be granted. The most recent Second Amended Complaint is significantly longer than the First Amended Complaint dismissed by the District Judge, and it is not appreciably clearer. For violating Rule 8 alone, dismissal is warranted. Though the question is close, the Court recommends dismissal with leave to amend. Both prior dismissals were sua sponte dismissals under Rule 8 only. The instant round of Motions to Dismiss have provided Plaintiff substantive feedback on the viability of certain claims, and this Report and Recommendation recommends dismissing certain claims with prejudice. That information may provide Plaintiff insight that will help him streamline the presentation of his case. The Court therefore believes that it would be appropriate to give Plaintiff one last opportunity to attempt to state a claim.

The Second Amended Complaint also is deficient for: (1) naming Defendants who are immune from suit under the Eleventh Amendment; (2) seeking forms of relief that neither Defendants nor the Court have the authority to grant; and (3) raising claims under statutes that have no private right of action. Because these deficiencies cannot be cured, some of Plaintiff's claims should be dismissed with prejudice, as described below.

RELEVANT PROCEDURAL HISTORY

Plaintiff initially filed his lawsuit on February 20, 2023. (ECF 1.) The District Court *sua sponte* dismissed the original Complaint with leave to amend, finding that it violated Rule 8 of the Federal Rules of Civil Procedure. (ECF 37.) Plaintiff's First Amended Complaint likewise was dismissed *sua sponte* for violating Rule 8. (ECF 38, 45 (describing the 75-page First Amended Complaint as "prolix, rambling, and excessively long").) On September 20, 2023, Plaintiff filed the operative Second Amended Complaint ("SAC"). (ECF 55.) The SAC is

121 pages long, plus almost 70 pages of exhibits, and contains 16 causes of action against more than 60 individuals. (*Id.*)

Pending before the Court are seven motions to dismiss. (ECF 58, 78, 88, 89, 92, 110, 122.) Plaintiff moves to voluntarily dismiss four individual Defendants from the case. (ECF 89.) Defendant Ira Spiro moves to dismiss the case against him, arguing that the Second Amended Complaint violates Rule 8 and requesting sanctions. (ECF 58.) Four groups of Defendants associated with the Peoples College of Law ("PCL Defendants") likewise move to dismiss primarily on the ground that the Second Amended Complaint violates Rule 8. (ECF 78, 92, 110, 122.) A group of Defendants associated with the State Bar of California ("State Bar Defendants") move to dismiss on the following grounds: (1) the Second Amended Complaint violates Rule 8; (2) the Eleventh Amendment bars claims against the State Bar and its employees sued in their official capacity; (3) all State Bar Defendants are entitled to either quasi-judicial immunity or qualified immunity; (4) Plaintiff has failed to state a claim against the State Bar Defendants; and (5) Plaintiff has failed to plead compliance with the California Government Claims Act. (ECF 88.)

The moving Defendants ask that the Second Amended Complaint be dismissed without leave to amend and with prejudice, and Defendant Spiro has asked for monetary sanctions payable to the Court and an order prohibiting Plaintiff from filing any further papers with the Court without prior written permission. (ECF 58 at 16-20; ECF 78 at 7-8; ECF 88 at 21; ECF 92 at 7-8; ECF 110 at 8-9; ECF 122 at 8-9.)

With the exception noted below, each of Defendants' Motions is now fully briefed. *See* ECF 82 & 85 (opposition and reply to ECF 58); ECF 81 & 100 (opposition and reply to ECF 78); ECF 103 & 107 (opposition and reply to ECF 88); ECF 104 & 109 (opposition and reply to ECF 92); ECF 118-19 & 124

(opposition and reply to ECF 110); ECF 127 (opposition to ECF 122).[1] Plaintiff's Motion to dismiss four individual Defendants is unopposed. All of the Motions are now ready for decision.

Also pending before the Court are Plaintiff's two requests for judicial notice. (ECF 102, 106.) The first is a 211-page "Request for Judicial Notice of Facts and Entry of Documents, etc.," which includes two exhibits from the State Bar regarding the Peoples College of Law's asserted noncompliance with State Bar rules. (ECF 102.) Plaintiff has asked that the Court take judicial notice of these exhibits and of "facts" drawn from Plaintiff's interpretation of the exhibits. (*Id.* at 7-13.) Defendant Spiro opposed the request for judicial notice, arguing that it concerns statements of fact subject to reasonable dispute. (ECF 105.) Plaintiff replied, disagreeing that the exhibits in question are subject to dispute. (ECF 112, 115.)

Plaintiff's "Second Request for Judicial Notice, etc.," requests that the Court take notice of: (1) *Leon v. Cnty. of Riverside,* 14 Cal. 5th 910 (2023) (concerning public employee immunity under California's Government Claims Act); and (2) a 1963 California Law Revision Commission "recommendation" regarding sovereign immunity in California (and Plaintiff's interpretation of these exhibits) "for judicial efficiency to avoid an error in ruling." (ECF 106.)

[1] The Court reviewed ECF 122, which is the fourth of four motions filed on behalf of a group of PCL Defendants, as well as Plaintiff's opposition to that Motion (ECF 127). The Motion and Opposition are practically identical to the briefing relating to the third motion, ECF 110, as to which Defendants have filed a reply. All PCL Defendants are represented by the same counsel. The Court recommends largely granting the relief sought by the PCL Defendants, and in any event does not anticipate that the Reply to ECF 122 will shed new light on its analysis of ECF 122 or the recommendations made here. For these reasons, the Court determines a reply is not necessary to its recommendations relating to ECF 122.

The time for opposing Plaintiff's Second Request for Judicial Notice has passed. Both requests for judicial notice are ready for decision.

THE SECOND AMENDED COMPLAINT

A. Summary of Plaintiff's Allegations

Without attempting to exhaustively state the facts set out in the 121-page Second Amended Complaint, the gist of Plaintiff's allegations, taken as true for purposes of the pending Motions, follows: Plaintiff enrolled in Peoples College of Law ("PCL"), an unaccredited law school in Los Angeles, California, in the fall of 2019. (SAC ¶¶ 2-3, 74, 84.) He passed the First Year Law School Exam—the "baby bar," a test required of individuals who attend unaccredited law schools—in June 2020. (SAC ¶ 76 Ex. H.) Since his enrollment at PCL, Plaintiff has raised numerous complaints about the management of the school with both PCL and the State Bar. (SAC ¶¶ 78, 90, 93, 99, 102-04, 107-09, 113, 115, 119-22, 139-73, 182, 206-19, 221-44, 250, 255-63.) Plaintiff alleges that due to the problems at PCL, and in retaliation for his complaints, he has been prevented from completing his degree at PCL or transferring to another law school to complete a degree. (SAC ¶¶ 79, 161, 189, 210, 260.)

More specifically, Plaintiff describes issues enrolling in classes that would permit him to obtain a degree, including being denied classes at PCL for his required "4L" year. (SAC ¶ 210.) Plaintiff requested and was denied an exemption from meeting PCL's unit or hourly requirements for awarding a degree. (SAC ¶¶ 213-14 (referencing the Committee of Bar Examiners' Guidelines for Unaccredited Law School Rules ("GULSR") Rule 5.6).) Plaintiff was encouraged to submit a proposed plan of study complying with PCL's "Admission Rules," or contact other law schools to see if he could enroll for the 2022-23 academic year. (SAC ¶¶ 214, 216.) Plaintiff describes countless issues getting an "accurate" transcript, which he alleges has prevented him from

transferring to a new school to complete his degree. (SAC ¶¶ 77-79, 105-06, 207-09, 213, 256, 260, 274, 305, 353, 367, 464, 470, 530, 562.) As of September 2023, Plaintiff's attempts to transfer to another school to complete his degree remain "stymied." (SAC ¶ 260.)

Plaintiff also alleges that, as a student, Plaintiff was a member of PCL's Board of Directors and he also served as Secretary. (SAC ¶¶ 91-92.) He believes that PCL is not operating in accordance with its own bylaws, or with "appropriate student solicitation, recruitment, and matriculation standards," including those set by the State Bar. (*E.g.*, SAC ¶¶ 92-99, 107, 110, 112.) Plaintiff alleges that PCL recruited students, demanded and collected funds, and entered into contracts in bad faith without disclosing PCL's "non-compliant status." (SAC ¶¶ 110-11.) Plaintiff further alleges that PCL is not managing its money properly or adequately maintaining and disclosing records as required. (SAC ¶¶ 99, 102-06, 108-11, 133-37.)

Based on these allegations, Plaintiff names as Defendants PCL's Board of Directors, officers, and agents, and numerous individuals associated with PCL. (SAC ¶¶ 2, 5-20.) Plaintiff also names individuals and entities relating to the State Bar and its Board of Trustees. (SAC ¶¶ 21, 23-68.) The State Bar formulates rules for unaccredited law schools like PCL, which govern the schools' registration status and degree-granting authority. (SAC ¶¶ 83-85.) One such rule is that the State Bar does not intervene in disputes between students and their law schools. (SAC ¶ 86.) Student complaints are reviewed only "to determine whether they raise compliance issues" with the rules for unaccredited law schools. (*Id.*) Another rule is that law schools must "deal with prospective students, applicants, and students in an honest and forthright manner in all financial dealings." (SAC ¶ 87.) Plaintiff claims that the State Bar and related entities failed to respond to his complaints, failed to oversee PCL's operations, and permitted PCL to operate in a "grossly negligent" and "overtly predatory

fashion in [PCL's] student recruitment and retention efforts." (*E.g.*, SAC ¶¶ 100-01, 113, 173.)

B. The Second Amended Complaint's Causes of Action

Plaintiff alleges sixteen causes of action: (1) breach of contract, (2) common law breach of fiduciary duty, (3) breach of fiduciary duty related to violation of federal and state administrative law and business practices, (4) breach of fiduciary duty related to solicitations in violation of California Business & Professions Code section 17510.8, (5) untrue or misleading statements in violation of California Business & Professions Code section 17500, (6) civil rights violations under 42 U.S.C. § 1981, (7) civil rights violations under 42 U.S.C. § 1981 and California Civil Code section 52.1 (the Bane Act), (8) negligence, (9) civil Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962, *et seq.*, (10) conspiracy, (11) common law extortion, (12) civil rights violations under 42 U.S.C. § 1983 under Title IX, 20 U.S.C. § 1681, *et seq.*, (13) civil rights violations under 42 U.S.C. § 1983 under Title IX, (14) civil rights violations under 18 U.S.C. § 241, (15) civil rights violations under 18 U.S.C. § 242, and (16) civil rights violations under 18 U.S.C. § 245. (SAC at 53-117.)

C. The Remedies Sought by Plaintiff

Hill alleges that the various PCL Defendants' actions have caused him to suffer financial and emotional harm for which he seeks declaratory, injunctive, and monetary relief, including attorney's fees and costs. He also seeks an accounting, the grant of a Juris Doctorate degree, and admission to the Federal Bar. (SAC ¶¶ 280, 287-89, 338-41, 356, 370, 380-81, 397-400, 521-22, 532, 545, 571-89.) Hill alleges that the various State Bar Defendants' actions have caused him to suffer financial harm for which he seeks declaratory, injunctive, and monetary relief including attorney's fees and costs. (SAC ¶ 322, 338-41, 397-400, 521-22, 545, 571-89.)

ANALYSIS

A. Standards for Dismissal Under Rules 12(b)(6) and 8 of the Federal Rules of Civil Procedure

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure "tests the legal sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal under Rule 12(b)(6) may be based on "either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Johnson v. Riverside Healthcare Sys., LP,* 534 F.3d 1116, 1121 (9th Cir. 2008) (citation omitted). To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation and internal quotations omitted). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (observing that Rule 8 does not require "detailed factual allegations" but requires more than "labels and conclusions").

When assessing the legal sufficiency of a plaintiff's claims, a court must accept as true all non-conclusory factual allegations contained in the complaint and must construe the complaint in the light most favorable to the plaintiff. *See Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 989 (9th Cir. 2009). A court must construe a pro se litigant's pleading liberally and hold a pro se plaintiff "to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus,* 551 U.S. 89, 94 (2007) (citation omitted).

Generally, a court may not consider material beyond the complaint in deciding a Rule 12(b)(6) motion. *Intri-Plex Techs., Inc. v. Crest Grp., Inc.,* 499 F.3d 1048, 1052 (9th Cir. 2007) (citation omitted). A court may consider "only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Akhtar v. Mesa*, 698 F.3d 1202, 1212

(9th Cir. 2012) (citation omitted); *Schneider v. Cal. Dep't of Corrs.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1988) ("In determining the propriety of a Rule 12(b)(6) dismissal, a court may *not* look beyond the complaint to a plaintiff's moving papers, such as a memorandum in opposition to a defendant's motion to dismiss.") (citations omitted).

The moving Defendants have asked for dismissal for failure to comply with Federal Rule of Civil Procedure 8. Rule 8 requires "a short and plain statement of the claim showing that the pleader is entitled to relief" where each allegation is "simple, concise, and direct." *See* Fed. R. Civ. P. 8(a), (d)(1)). Rule 8 is grounds for dismissal independent of Rule 12(b)(6), and dismissal on Rule 8 grounds does not require that a complaint be wholly without merit. *See McHenry v. Renne,* 84 F.3d 1172, 1179 (9th Cir. 1996). Such dismissal is typically reserved for those "instances in which the complaint is so 'verbose, confused and redundant that its true substance, if any, is well disguised.'" *Hearns v. San Bernardino Police Dep't*, 530 F.3d 1124, 1131 (9th Cir. 2008) (quoting *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1969)); *see also McHenry*, 84 F.3d at 1178-79 (court may dismiss a pro se litigant's complaint for noncompliance with Rule 8); *see generally Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) ("Although we construe pleadings liberally in their favor, pro se litigants are bound by the rules of procedure."); Local Rule 83-2.2.3 (pro se litigants are bound by Local Rules and federal rules).

For example, "shotgun pleading" complaints full of "everyone did everything" allegations are subject to dismissal for violating Rule 8. *See Destfino v. Reiswig*, 630 F.3d 952, 958 (9th Cir. 2011). As the District Judge explained in connection with dismissal of Plaintiff's First Amended Complaint:

> Shotgun pleadings are pleadings that overwhelm defendants with an unclear mass of allegations and make it difficult or impossible for defendants to make informed responses to the plaintiff's

> allegations . . . . One common type of shotgun pleading comes in cases with multiple defendants where the plaintiff uses the omnibus term "Defendants" throughout a complaint by grouping defendants together without identifying what the particular defendants specifically did wrong. Another type is where the plaintiff recites a collection of general allegations toward the beginning of the Complaint, and then each count incorporates every antecedent allegation by reference . . . . This shotgun pleading style deprives Defendants of knowing exactly what they are accused of doing wrong.

(ECF 45 at 5-6 (quoting *Sollberger v. Wachovia Secs., LLC,* No. SACV 09-0766 AG (ANx), 2010 WL 2674456, at *4-5 (C.D. Cal. June 30, 2010)).)

Dismissal for failure to comply with Rule 8 is proper where "the very prolixity of the complaint [makes] it difficult to determine just what circumstances were supposed to have given rise to the various causes of action." *McHenry,* 84 F.3d at 1178. "Experience teaches that, unless cases are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court's docket becomes unmanageable, the litigants suffer, and society loses confidence in the court's ability to administer justice." *Bautista v. L.A. Cnty.*, 216 F.3d 837, 841 (9th Cir. 2000) (citation omitted).

B. Plaintiff's Requests for Judicial Notice Should Be Denied in Part

Before analyzing the pending Motions, the Court has reviewed Plaintiff's requests for judicial notice—one for judicial notice of certain documents prepared by the State Bar and the other for judicial notice of cases and other authorities. (ECF 102, 106.) The Court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is "generally known within the trial court's territorial jurisdiction" or (2) can be "accurately and readily determined

from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

As an initial matter, "[c]ourts do not take judicial notice of documents, they take judicial notice of facts. The existence of a document could be such a fact, but only if the other requirements of Rule 201 are met." *Cruz v. Specialized Loan Servicing, LLC*, No. SACV 22-01610-CJC (JDEx), 2022 WL 18228277, at *2 (C.D. Cal. Oct. 14, 2022) (citation and internal brackets omitted). Documents in the public record may be judicially noticed to show, for example, that a judicial proceeding occurred or that a document was filed in another case. *Lee v. City of L.A.*, 250 F.3d 668, 689-90 (9th Cir. 2001). That does not mean, however, that a court may take judicial notice of findings of fact from another case. *Id.*

As applied here, the Court may take notice of the existence of the State Bar exhibits (ECF 102), as those are documents made publicly available by a government entity. *See Daniels-Hall v. Nat'l Educ. Ass'n,* 629 F.3d 992, 998-99 (9th Cir. 2010). It may not, however, take judicial notice of the factual findings contained in those document or Plaintiff's interpretation of the facts contained in the exhibits. *See M/V Am. Queen v. San Diego Marine Const. Corp.*, 708 F.2d 1483, 1491 (9th Cir. 1983) ("[A] court may not take judicial notice of proceedings or records in another cause so as to supply, without formal introduction of evidence, facts essential to support a contention in a cause then before it.").

The Court need not take judicial notice of the California authorities that Plaintiff cites for "judicial efficiency." (ECF 106.) First, it is not necessary to ask for judicial notice of cases and other legal authority; the Court has considered all relevant legal authorities in making the recommendations contained in this Report and Recommendation, and may do so without taking judicial notice of those authorities. Nor is it appropriate to smuggle legal arguments into a request for judicial notice. Plaintiff must cite and discuss any relevant legal authority in his briefing to the Court, and not in a request for judicial notice.

For these reasons, the Court recommends that Plaintiff's request for judicial notice of the State Bar exhibits (**ECF 102**) be **granted in part and denied in part**. The Court should take judicial notice of the existence of those documents, but not the validity or accuracy of the contents of those documents.

Plaintiff's request for judicial notice of legal authorities (**ECF 106**) should be **denied** in its entirety.

C. The Second Amended Complaint Should Be Dismissed for Failure to Comply with Rule 8

The 121-page SAC, like the First Amended Complaint (*see* ECF 45 at 8-9 (discussing same)), is excessively long and often confusing. Indeed, the SAC is almost fifty pages *longer* than the First Amended Complaint—a complaint that the District Judge described as excessively prolix. Moreover, despite the District Judge's prior warnings, the SAC continues to exhibit the landmarks of a "shotgun pleading." The Court thus agrees with Defendants that dismissal under Rule 8 is once again appropriate.

The Court provides concrete examples of the problems with the SAC, but does not attempt to catalogue them exhaustively. At the outset, the SAC contains 38 pages of general allegations common to all counts. (SAC ¶¶ 74-263.) Each cause of action then incorporates by reference every antecedent allegation. (SAC ¶¶ 264, 290, 309, 323, 334, 344, 357, 371, 382, 460, 523, 533, 549, 558, 565, 567.) It is difficult to discern, therefore, which allegations actually form the basis of any cause of action.

Although the headings for the causes of action purport to name the Defendants for which each cause of action applies, Plaintiff generally uses the term "Defendants" throughout the Second Amended Complaint without identifying with particularity which Defendant(s) are referenced. (*E.g.*, SAC ¶¶ 276-78, 281, 283-89, 304, 321, 324-25, 328, 330, 332-33, 335, 338-39, 341-43,

361-62, 364, 367-70, 393, 396, 398, 428, 431, 439, 441, 454, 458, 464, 466, 476, 479-80, 490, 492, 522, 528-29, 532, 542, 545.)

Many of the named Defendants (*e.g.*, Roger Amayo (or Aramayo), Ismael Venegas, William Maestas, the State of California, Jay Frykberg, Larry Kaplan, Carolyn Holmes, Robert S. Brody, Rachel R. Rossi, and Shataka Shores-Brooks) do not appear in any allegations despite the initial paragraphs identifying them as defendants. (SAC ¶¶ 18-20, 22, 43, 47, 50, 58-59, 62, 65, 67.) The caption lists some individuals (*e.g.,* Jessica Viramontes, Jean Krasilnikoff, Natalie Leonard, and the Attorney General of the United States) who are not identified as Defendants. (SAC at 2-5.) The headings for the causes of action also purport to name some individuals (*e.g.*, Knowles) who are not identified as Defendants. (SAC at 59, 80, 95.)

Similarly, several causes of action purport to name individual Defendants yet contain no specific allegations about what those individuals did—meaning the Court would have to comb through Plaintiff's hundreds of prior allegations incorporated by reference to find these Defendants (if they are mentioned at all). For example, the Third Cause of Action names Defendants Venegas and Aramayo but contains no specific allegations involving either of these Defendants. (SAC ¶¶ 309-22.) The Sixth Cause of Action does not identify any Defendant(s) to which it applies. (SAC ¶¶ 344-56.) The Eighth Cause of Action names Defendants Duran, Sowell, Chen, Wong, Shores-Brooks, Lawrence, Xiang, Herman, and Cisneros, but contains no specific allegations as to any of these Defendants. (SAC ¶¶ 371-81.) The Tenth Cause of Action names Defendant Mazer but contains no specific allegations involving this Defendant. (SAC ¶¶ 460-522.) The Thirteenth Cause of Action names Defendants Gillens, Hope, and "Zuniga2," but contains no specific allegations involving these Defendants. (SAC ¶¶ 549-57.) The Fourteenth Cause of Action names Defendants Maestas, Aramayo, Gillens, Krasilnikoff, and "Zuniga2," but

contains no specific allegations involving these Defendants. (SAC ¶¶ 558-64.) The Fifteenth and Sixteenth Causes of Action name Defendants Maestas, Aramayo, Gillens, Krasilnikoff, and "Zuniga2," but contain no specific allegations involving these Defendants, and no factual allegations at all—only legal conclusions. (SAC ¶¶ 565-68.)

Although Plaintiff names as defendants PCL's Board of Directors, officers, agents, and unidentified "individuals," and the State Bar, the Committee of Bar Examiners, the Committee of State Bar Accredited and Registered Schools, and the State Bar's Office of General Counsel, Office of Chief Trial Counsel, and Office of Admissions, he has not named these Defendants in any of his causes of action. (SAC ¶¶ 2, 21, 23-27.)

These errors and others like them prevent any given Defendant from understanding exactly what Plaintiff alleges that Defendant did wrong. And more fundamentally, stepping back from these discrete pleading problems, the SAC does not do what the District Judge instructed Plaintiff to do: "'intelligently inform' Defendants in this action—and this Court—who violated his rights, what facts show that his rights were violated, when the violations occurred, where they happened, and why he is entitled to relief." (See ECF 45 at 10.) Despite significant effort, this Court is lost in a sea of events, meetings, and emails, without a clear understanding of how any of the allegations support Plaintiff's claims. And each cause of action contains lists of facts, many of which have no relation to the cause of action under which they fall—making it impossible for the Court to test their legal sufficiency. (*See*, *e.g.*, SAC ¶¶ 264-89 (breach of contract claim that includes allegations about, among other things, record keeping issues, retaliation, and breach of fiduciary duties).)

In opposing the pending Motions to dismiss, Plaintiff argues that the details in the SAC provide necessary context, and he insists that the pleading is as organized and streamlined as it can be. (ECF 82 at 16.) The Court disagrees.

Not every communication, email, and meeting between Plaintiff and Defendants is necessary context. And unfortunately for Plaintiff, the important parts of Plaintiff's account simply get lost in the recitation of such unnecessary details.

Nor can the length and detail in the SAC be justified by Rule 9 of the Federal Rules of Civil Procedure. (ECF 82 at 19.) Rule 9 requires that a party "state with particularity the circumstances constituting fraud or mistake." But Rule 9 "is not an invitation to disregard Rule 8's requirement of simplicity, directness, and clarity." *McHenry*, 84 F.3d at 1178. It does not provide Plaintiff license to file a bloated pleading.

The Court therefore recommends that the Second Amended Complaint be dismissed as violating Rule 8. *See, e.g., Gjovik v. Apple Inc.*, No. 23-cv-04597-EMC, 2024 WL 347922, at *1-2 (N.D. Cal. Jan. 30, 2024) (dismissing second amended complaint with leave to amend, and cautioning plaintiff to "not go into every nuance and aspect of her case").

The next question is whether dismissal should be with leave to amend. That question is a close one. All Defendants argue that dismissal should be with prejudice and without further leave to amend, and their arguments in support of that position have some force. The problems identified above are ones that were fleshed out in the District Judge's previous orders. Instead of taking those findings to heart, Plaintiff continues down his own path—almost defiantly so. Instead of filing a shorter pleading, Plaintiff filed a Second Amended Complaint that was significantly *longer* than the prior version. The pleading is so long that not even Plaintiff can keep track of which Defendants are in the case and are named in which causes of action. He continues to incorporate by reference large swaths of allegations in his SAC, and to use "Defendants" where he needs to specify *which* Defendants he means. Plaintiff has twice before been granted leave to amend, and the fact that Plaintiff has yet to make progress toward complying with the District Judge's instructions—and in some respects, is *losing*

ground—would give the Court ample reason to deny leave to amend within the exercise of its discretion.

Even so, the Court recommends that Plaintiff be given one more opportunity to amend to comply with Rule 8. The standard for denying leave to amend is a high one: a court may not dismiss a complaint without leave to amend unless "it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Akhtar*, 698 F.3d at 1212 (citation omitted); *see also Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (district court should grant leave to amend "unless it determines that the pleading could not possibly be cured by the allegation of other facts") (citation omitted). The Court notes three reasons why the better course is to grant leave to amend under the circumstances here.

First, the two prior dismissals were sua sponte and related only to Rule 8. This time, Defendants' Motions have provided additional feedback to Plaintiff, not only as to why the SAC is deficient under Rule 8, but also as to specific problems with specific claims and specific Defendants. The Court does not suggest that Plaintiff is under any obligation to accept his opponents' view of either the facts or the law regarding his claims. At the same time, it would be prudent for him to consider whether there is any truth in Defendants' arguments; doing so might help Plaintiff streamline his presentation.

Second, this Report and Recommendation recommends dismissal of certain aspects of the SAC with prejudice and without further leave to amend. Plaintiff *must* comply with those instructions. That, too, should assist Plaintiff in streamlining any amended complaint.

Finally, the Court notes—without making any findings of fact—that after Plaintiff initiated these proceedings, the State Bar reportedly revoked PCL's registration and terminated PCL's degree-granting authority based on PCL's alleged inability to sustain a compliant legal education program. (ECF 102 at

210-11.) The State Bar reportedly directed PCL to identify a custodian of record to assist students and graduates with transcript requests, and noted its readiness to assist PCL's remaining students who will not have completed their legal education by May 31, 2024 (which presumably includes Plaintiff), in finding placements to continue their legal education. (*Id.*) Without assuming the truth of any of these facts, these developments may help Plaintiff focus his allegations against PCL, and perhaps, against the State Bar Defendants as well.

The Court therefore recommends that Defendants' Motions to Dismiss the Second Amended Complaint (ECF 58, 78, 88, 89, 92, 110, 122) for failure to comply with Rule 8 be **granted** and that the Second Amended Complaint be **dismissed with leave to amend**, except to the extent that the next sections describe portions of the pleading as to which the Court recommends dismissal with prejudice and without leave to amend.

D. The Second Amended Complaint Should Be Dismissed for Additional Deficiencies Which Plaintiff Cannot Cure

The State Bar Defendants raise other arguments concerning the sufficiency of Plaintiff's allegations. (ECF 88 at 10-12, 15-21.) Because the Court generally recommends that leave to amend be granted, the Court notes the following deficiencies (which cannot be cured and which should not be included in any amended pleading).

1. The State Bar's Eleventh Amendment Immunity

The State Bar Defendants argue that many of the claims against the State Bar itself, against its departments (*i.e.*, The Committee of Bar Examiners, the Committee of State Bar Accredited and Registered Schools, the Office of General Counsel, the Office of Chief Trial Counsel, and the Office of Admissions), and against its employees acting in their official capacity, are barred by the Eleventh Amendment. (ECF 88.) The Court agrees.

The Eleventh Amendment provides that the "judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State." U.S. Const. amend. XI. The Eleventh Amendment bars federal jurisdiction over suits by individuals against a State and its instrumentalities, unless either the State unequivocally consents to waive its sovereign immunity or Congress abrogates it. *Belanger v. Madera Unified Sch. Dist.*, 963 F.2d 248, 250 (9th Cir. 1992); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99-100 (1984).

The State Bar "is an arm of the state and entitled to sovereign immunity." *Kohn v. State Bar of Cal.,* 87 F.4th 1021, 1023, 1032-38 (9th Cir. 2023) (en banc) (citations omitted), *petition for cert. filed*, ___ U.S.L.W. ___ (U.S. Mar. 7, 2024) (No. 23-6922). Entities and committees under the umbrella of the State Bar share its immunity. *Lupert v. Cal. State Bar*, 761 F.2d 1325, 1327-29 (9th Cir. 1985) (Eleventh Amendment barred federal suit against State Bar Board of Governors and State Committee of Bar Examiners challenging the constitutionality of State Bar rules for students enrolled at unaccredited law schools).[2]

Plaintiff also purports to names the individual State Bar Defendants in their official capacities. (*See* SAC at 2 (caption noting the individual State Bar defendants are sued "as employees acting in official capacity or as individuals.").) Official capacity suits against state employees are the equivalent of suits against the State. *See generally Kentucky v. Graham*, 473 U.S. 156, 166, 169-70 (1985). And as such, the Eleventh Amendment bars any claims for

[2] The State Bar Defendants also argue that only the State Bar, and not its departments, has the capacity to sue and be sued. (*See* ECF 88 at 10-11 (citing Cal. Bus. & Prof. Code § 6001).) Given the Court's finding that the Eleventh Amendment bars Plaintiff's claims against the State Bar and its committee and departments, the Court need not decide this issue.

damages against such individuals. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 & n.10 (1989) (noting limited exception to Eleventh Amendment immunity, in that official-capacity actions for injunctive or declaratory relief for allegedly unconstitutional state action are not treated as actions against the State) (citing *Graham*, 473 U.S. at 167 n.14 and *Ex Parte Young*, 209 U.S. 123, 159-60 (1908)).

Eleventh Amendment immunity is not absolute. States (or arms of a State) may be subject to suit in federal court if: (1) Congress enacts a law that authorizes such a suit, or (2) the state consents to be sued in a federal forum. *See Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.,* 527 U.S. 666, 670 (1999); *see also Pennhurst State Sch.*, 465 U.S. at 100 ("[I]n the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment."). The question, then, is whether any of Plaintiff's claims survive under those tests.

Here, Plaintiff purports to bring claims against "Defendants" (which may or may not include individual State Bar defendants) under three federal statutes: (a) 42 U.S.C. §§ 1981 and 1983 (Plaintiff's Sixth, Seventh, Twelfth, and Thirteenth Causes of Action), (b) Title IX (Plaintiff's Twelfth and Thirteenth Causes of Action), and (c) the civil RICO Act (Plaintiff's Ninth Cause of Action). (SAC at ¶¶ 344-70, 382-459, 533-57.)[3] Apart from Title IX, none of the federal laws on which Plaintiff relies authorizes Plaintiff's suit, and the State has not consented to be sued.

[3] Plaintiff also purports to bring claims under 18 U.S.C. §§ 241, 242, and 245. (SAC ¶¶ 558-68.) As detailed below, however, there is no private right of action under the federal criminal statutes cited to by Plaintiff. Because those claims fail for a more fundamental reason, the Court does not address whether those claims are barred under the Eleventh Amendment.

First, Congress has not authorized suits against the States (or arms of the State) under § 1981 or § 1983. *See Mitchell v. L.A. Cmty. Coll. Dist.*, 861 F.2d 198, 201 (9th Cir. 1988) (finding State entities immune from claims for damages and injunctive relief under Sections 1981, 1983, and 1985). Nor has the State consented to such claims. *Brown v. Cal. Dep't of Corrs.*, 554 F.3d 747, 752 (9th Cir. 2009) ("The State of California has not waived its Eleventh Amendment immunity with respect to claims brought under § 1983 in federal court, and the Supreme Court has held that § 1983 was not intended to abrogate a State's Eleventh Amendment immunity.") (citation and internal brackets omitted). As such, Plaintiff's § 1981 and § 1983 claims are barred by the Eleventh Amendment. *See Ezor v. Betty Yee*, No. CV 23-00094-JVS (AGR), 2024 WL 947991, at *9-10 (C.D. Cal. Jan. 18, 2024) (dismissing § 1983 claims against the State Bar and damages claims against the individual State Bar defendants in their official capacities as barred under Eleventh Amendment), *report and recommendation adopted*, 2024 WL 943440 (C.D. Cal. Mar. 5, 2024).

The civil RICO statute also does not authorize suits against States or arms of States. *See Prod. & Leasing v. Hotel Conquistador, Inc.,* 573 F. Supp. 717, 720 (D. Nev. 1982) ("Without a clear showing that Congress intended abrogation of the Eleventh Amendment governmental immunity, this Court will not infer that the RICO Act deprives the State . . . of its protection."), *aff'd*, 709 F.2d 21 (9th Cir. 1983); *see also*, *e.g.*, *Behringer v. Cal. Polytechnic State Univ., San Luis Obispo*, No. 5:23-cv-00934-JFW (SK), 2023 WL 6811813, at *6 n.6 (C.D. Cal. Sept. 15, 2023) (noting "incurable" deficiency in complaint for alleging civil RICO violation against state agency and state officer sued in official capacity), *report and recommendation adopted*, 2023 WL 6810244 (C.D. Cal. Oct. 16, 2023), *appeal filed*, No. 23-4162 (9th Cir. Dec. 14, 2023); *Vierria v. Cal. Highway Patrol*, 644 F. Supp. 2d 1219, 1232 (E.D. Cal. 2009) (granting motion

to dismiss civil RICO claim asserted against state officer sued in his official capacity).[4]

The Title IX claims are different: Congress *has* abrogated state sovereign immunity for Title IX claims, and thus, there is no Eleventh Amendment bar to Plaintiff's claim. *Stanley v. Trs. of Cal. State Univ.*, 433 F.3d 1129, 1133 (9th Cir. 2006) (citation omitted). There appear to be other problems with the Title IX claims,[5] but Eleventh Amendment immunity is not such a problem.

As for Plaintiff's state law claims, those are also barred by the Eleventh Amendment. *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004) (Eleventh Amendment "precludes the adjudication of pendent state law claims against nonconsenting state defendants in federal courts"). Indeed, even *Ex Parte Young*'s narrow exception for ongoing violations of federal law is "inapplicable in a suit against state officials on the basis of state law"; "it is difficult to think of a greater intrusion on state sovereignty than when a federal

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[4] This is only one problem with alleging civil RICO claims against the State Bar Defendants. As the State Bar Defendants point out, Plaintiff's RICO claims against them also fail because government entities are incapable of forming malicious intent necessary to sustain that cause of action. (ECF 88 at 12-13); *see Pedrina v. Chun*, 97 F.3d 1296, 1300 (9th Cir. 1996) (quoting *Lancaster Comty. Hosp. v. Antelope Valley Hosp.*, 940 F.2d 397, 404 (9th Cir. 1991). That rule extends to claims against individuals sued in their official capacities. *Abcarian v. Levine*, 972 F.3d 1019, 1027 (9th Cir. 2020).

[5] Title IX bars sex-based discrimination by educational institutions in certain settings. *See* 20 U.S.C. § 1681(a) (detailing prohibitions). The law "reaches institutions and programs that receive federal funds, . . . but it has consistently been interpreted as not authorizing suit against school officials, teachers, and other individuals." *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 257 (2009) (citations omitted); *Al-Rifai v. Willows Unified Sch. Dist.*, 469 F. App'x 647, 649 (9th Cir. 2012) ("Title IX does not create a private right of action against school officials, teachers, and other individuals who are not direct recipients of federal funding.") (citation omitted). Plaintiff's Title IX claims name only individual State Bar defendants who cannot be sued under Title IX. They also do not clearly allege discrimination on the basis of sex.

court instructs state officials on how to conform their conduct to state law." *Pennhurst State Sch.*, 465 U.S. at 106. Thus, all state claims against the State Bar, entities under the State Bar, and individual State Bar defendants acting in their official capacity are barred by the Eleventh Amendment. See *Konig v. State Bar of Cal.*, No. C 04-2210 MJJ, 2004 WL 2091990, at *4 (N.D. Cal. Sept. 16, 2004) (holding that the California State Bar and state officials sued in their official capacities were immune from suit for state law claims).

In sum, the Eleventh Amendment bars Plaintiff's federal and state claims against the State Bar and its departments, with the exception of a Title IX claim—though to be viable, any Title IX claim would have to address the issues noted in footnote 5. Claims for damages against individual State Bar Defendants sued in their official capacities are likewise barred, as are all state claims against individual State Bar Defendants sued in their official capacities. Since amendment of any claim barred by the Eleventh Amendment would be futile, the State Bar Defendants' Motion to Dismiss (ECF 88) should be **granted in part** as follows: (1) all claims against the State Bar and its committees or departments, except for Plaintiff's Twelfth and Thirteenth Causes of Action based only on Title IX, should be **dismissed with prejudice** as the State Bar Defendants have Eleventh Amendment immunity; (2) all claims against the individual State Bar Defendants in their official capacity, except for Plaintiff's Sixth, Seventh, Twelfth, and Thirteenth Causes of Action to the extent they seek declaratory or injunctive relief, should be **dismissed with prejudice** as these Defendants have Eleventh Amendment immunity. The State Bar Defendants' Motion to Dismiss (ECF 88) Plaintiff's Twelfth and Thirteenth Causes of Action based only on Title IX, and Plaintiff's Sixth, Seventh, Twelfth, and Thirteenth Causes of Action to the extent they seek declaratory or injunctive relief, should be **denied**. The State Bar Defendants' Motion to Dismiss (ECF 88) those

Defendants in their individual capacities, should be **denied without prejudice**.[6]

2. Plaintiff Fails to State a Claim for Relief for Admission to the Federal Bar

In the Sixth Cause of Action, Plaintiff seeks an "equitable remedy" of Federal Bar admission based on alleged civil rights violations. (SAC ¶¶ 344-56.) Plaintiff fails to state a claim for relief that any of the Defendants (or this Court) can provide. Federal Bar admission is made on a court-by-court basis, and generally is reserved for attorneys who are active members of the State bar in good standing where the federal court is located. *See, e.g.,* Local Rule 83-2.1.2.1

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[6] To the extent the individual State Bar Defendants are sued in their individual capacities, these Defendants assert they are entitled to quasi-judicial immunity or qualified immunity. (ECF 88 at 9.) Whether quasi-judicial immunity applies hinges on "the specific function performed, and not the role or title of the official" who performs it. *Miller v. Gammie,* 335 F.3d 889, 897 (9th Cir. 2003). State bar officials generally are immune from monetary damages "so long as they perform functions similar to judges and prosecutors in a setting like that of a court." *Hirsh v. Justs. of Sup. Ct. of State of Cal.*, 67 F.3d 708, 715 (9th Cir. 1995). Quasi-judicial immunity does not extend to investigative activities. *Delacruz v. State Bar of Cal.*, No. 16-cv-06858-BLF (SVK), 2017 WL 7310715, at *3 (N.D. Cal. June 21, 2017), *report and recommendation adopted*, 2017 WL 3129207 (N.D. Cal. July 24, 2017). For qualified immunity, government officials or employees performing discretionary functions are generally shielded from liability for civil damage insofar as their conduct does not violate clearly established statutory or constitutional rights about which a reasonable person would have known. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *see also Cmty. House, Inc. v. City of Boise, Idaho*, 623 F.3d 945, 966 (9th Cir. 2010) ("[Q]ualified immunity covers only defendants in their individual capacities[.]"). It is impossible to tell from the vague and rambling allegations in the Second Amended Complaint whether any of the individual State Bar Defendants may be entitled to quasi-judicial or qualified immunity. The District Judge should decline to decide this issue on the present pleadings and deny the individual State Bar Defendants' motion to dismiss on this point without prejudice.

(limiting admission to the Bar of this Court to persons of good moral character who are active members in good standing of the State Bar of California).

A party invoking federal court jurisdiction bears the burden of establishing that the court has the authority to grant the relief requested. *Kokkonen v. Guardian Life Ins. of Am.*, 511 U.S. 375, 377 (1994). Plaintiff cannot do so here. Plaintiff admittedly is not a member of the State Bar, so the Court is without authority to grant such relief.

The Court should **grant** Defendants' Motions to Dismiss Plaintiff's Sixth Cause of Action on this basis. (*See, e.g.*, ECF 78 at 6, ECF 88 at 26.) The Sixth Cause of Action should be **dismissed with prejudice** to the extent Plaintiff seeks Federal Bar admission.

3. Plaintiff Fails to State a Claim Under Criminal Statutes

In his Fourteenth, Fifteenth, and Sixteenth Causes of Action, Plaintiff purports to allege civil rights violations under 18 U.S.C. §§ 241, 242, and 245. (SAC ¶¶ 558-68.) As State Bar Defendants properly argue (ECF 88 at 15), these are criminal statutes—§ 241 concerns conspiracies to violate a person's Federal rights, § 242 concerns willful deprivations of a person's constitutional or Federal rights under color of law, and § 245 generally prohibits interference with certain individual activities such as voting, applying for employment, and serving as a juror. *See* 18 U.S.C. §§ 241, 242, 245.

None of these statutes provide for a private right of action. It is well established that such criminal statutes provide no basis for civil liability. *See Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006) (addressing §§ 241, 242); *Aldabe v. Aldabe* 616 F.2d 1089, 1092 (9th Cir. 1980) (same); *Miller v. Farris*, No. CV 21-9551-SSS (AS), 2022 WL 17079056, at *8 (C.D. Cal. Oct. 17, 2022) (finding no basis for civil liability under all three sections and dismissing such claims with prejudice), *report and recommendation adopted*, 2022 WL 17252580 (C.D. Cal. Nov. 28, 2022). "[U]nless a specific statute

provides for a private right of action, courts have found that violations of Title 18 are properly brought by the United States government through criminal proceedings and not by individuals in a civil action." *Banuelos v. Gabler*, No. 1:18-cv-00675-LJO-SAB, 2018 WL 2328221, at *3 (E.D. Cal. May 22, 2018).

For these reasons, State Bar Defendants' Motions to dismiss Plaintiff's claims pursuant to 18 U.S.C. §§ 241, 242, and 245 should be **granted** and Plaintiff's claims alleging violations of 18 U.S.C. §§ 241, 242, and 245 should be **dismissed with prejudice**.

E. Other Issues with the Second Amended Complaint Which Can Be Cured

There are other issues with the SAC that can be cured. The Court discusses those issues briefly here, to ensure that the SAC's errors are not repeated.

First, Defendant Gonzalez has moved to dismiss the Second Amended Complaint for insufficient service of process under Rules 4(e) and 12(b)(5) of the Federal Rules of Civil Procedure, alleging that she was mailed the summons and complaint at her place of business. (ECF 78 at 7.) Once service has been challenged, plaintiff bears the burden of establishing that service was valid. *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004). Rule 4 is a "flexible rule that should be liberally construed so long as a party receives sufficient notice of the complaint." *United Food & Com. Workers Union v. Alpha Beta Co.,* 736 F.2d 1371, 1382 (9th Cir. 1984). At the same time, absent substantial compliance with Rule 4, "neither actual notice nor simply naming the defendant in the complaint" will suffice. *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986), *amended*, 807 F.2d 1514 (9th Cir. 1987).

Defendant Gonzalez admits that she was mailed the summons and complaint at her place of business, and that incoming mail is sorted by a receptionist and/or office manager, but argues that (a) her business office is not

authorized to accept personal service for personal matters, and (b) her employment is unrelated to her past volunteer services on PCL's Board of Directors. (ECF 78 at 7; ECF 78-1 at 2.) Plaintiff, on the other hand, argues that Defendant Gonzalez "timely retained counsel" and "acknowledges receipt of the complaint"; he further alleges that he was unable to locate Defendant Gonzalez's personal address and used her address from her State Bar listing for service. (ECF 81 at 5-6.)

Under Rule 4(e)(1), service on an individual is sufficient if it is carried out under the law of the state in which the district court is located or where service is made, in this case California. *Motul S.A. v. USA Wholesale Lubricant, Inc.*, No. 4:22-cv-04841-JSW, 2023 WL 5061945, at *2 (N.D. Cal. Aug. 8, 2023). The California Code of Civil Procedure provides that:

> If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served . . . a summons may be served by leaving a copy of the summons and complaint at the person's . . . usual place of business . . . in the presence of . . . a person apparently in charge of his or her office . . . at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left.

Cal. Code Civ. P. § 415.20(b). Here, it appears that Plaintiff did not effect personal delivery to a person in charge of Defendant Gonzalez's office as required before mailing a copy of the Second Amended Complaint to Defendant Gonzalez's place of business. But because the Court is recommending dismissal of the Second Amended Complaint in its entirety, Defendant Gonzalez need not be separately dismissed for failure to effect proper service. **Plaintiff is**

cautioned, however, that he must effect proper service of any Third Amended Complaint on Defendant Gonzalez. Defendant Gonzalez' Motion to Dismiss for insufficient service of process is **denied without prejudice as moot**.

Second, in the caption for the Second Amended Complaint, Plaintiff purports to act as "attorney-in-fact *guardian ad litem* to Roes 1-8." (SAC at 1.) Pro se litigants have no authority to represent anyone other than themselves. *See Simon v. Hartford Life, Inc.*, 546 F.3d 661, 664 (9th Cir. 2008) (non-attorney may not attempt to pursue claim on behalf of others in a representative capacity).

Third, the Second Amended Complaint also purports to name 88 Doe defendants. (SAC at 4 & ¶¶ 194, 527, 530.) Local Rule 19-1 limits the number of Doe defendants a plaintiff can name to ten. (L.R. 19-1.) Additionally, Doe defendants should not be used as a placeholder. If Plaintiff is aware of other individuals who were involved but does not know their names, he may refer to such defendants as John Does, but he "must allege specific facts showing how each particular doe defendant violated his rights." *Keavney v. Cnty. of San Diego*, No. 3:19-cv-01947-AJB-BGS, 2020 WL 4192286 at *4-5 (S.D. Cal. July 21, 2020) (citation omitted). If he simply believes that there may be other individuals involved and that he may discover their existence during some later phase of the case, he should remove the "John Doe" allegations and seek to amend to add new defendants under Rule 15 of the Federal Rules of Civil Procedure. *See Coleman v. Fed. Intermediate Credit Bank*, 600 F. Supp. 97, 101 (D. Or. 1984) (citing *Fifty Assocs. v. Prudential Ins. Co. of Am.*, 446 F.2d 1187, 1191 (9th Cir. 1970)).

Finally, the Court observes that Plaintiff is seeking attorney's fees. Prevailing pro se litigants in civil rights actions may not recover attorney's fees. *See Kay v. Ehrler*, 499 U.S. 432, 438 (1991).

Any Third Amended Complaint should correct these issues.

F. Defendant Spiro's Request for Sanctions Should Be Denied Without Prejudice

Defendant Spiro seeks sanctions, purportedly under Local Rules 83-2.2.3, 83-2.2.4, and 83-7, in the form of a monetary sanction payable to the Court, and an order preventing Plaintiff from filing further papers with the Court without prior written permission. (ECF 58 at 19-20.) Local Rule 83-2.2.4 provides for potential sanctions of dismissal or default judgment for a pro se plaintiff's failure to comply with rules; whereas Local Rule 83-7 provides for monetary or other "appropriate" sanctions if the Court finds that a party's conduct in violating Local Rules was "willful, grossly negligent, or reckless." *Compare* L.R. 83-2.2.4 *with* L.R. 83-7. On the present record, it appears that Plaintiff's failed attempts to file a complaint in conformity with the applicable rules do not at this time merit sanctions. Defendant Spiro's request for sanctions (ECF 58) should be **denied without prejudice**.

G. Plaintiff's Motion to Dismiss Certain Defendants Without Prejudice Should Be Denied as Moot

Plaintiff has moved, without opposition, to voluntarily dismiss from the case Imelda Santiago, Gina Crawford, Melanie Lawrence, and Juan De La Cruz pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. (ECF 89.) These Defendants allegedly are State Bar employees (SAC at 3 & ¶¶ 43, 48, 59), and are included in the State Bar Defendants' motion to dismiss. (ECF 88 at 1; *see also id.* at 10 n.6 (noting without objection that Plaintiff had advised he was moving to voluntarily dismiss these defendants).)

The decision to grant a voluntary dismissal under Rule 41(a)(2) is in the "sound discretion of the district court." *Navellier v. Sletten*, 262 F.3d 923, 938 (9th Cir. 2001). Given the recommendation that the Second Amended Complaint be dismissed in its entirety for failure to comply with Rule 8, Plaintiff's Motion

to Dismiss these Defendants should be **denied as moot**; Plaintiff may simply not include those individuals in any amended complaint.

RECOMMENDATION

IT THEREFORE IS RECOMMENDED that the District Judge issue an Order:

(1) accepting and adopting this Interim Report and Recommendation;

(2) granting in part Plaintiff's Request for Judicial Notice (ECF 102), but only as to the existence of the attached State Bar exhibits, and not as to the validity or accuracy of the contents of these exhibits;

(3) denying Plaintiff's Second Request for Judicial Notice (ECF 106);

(4) granting in part the moving Defendants' Motions to Dismiss the Second Amended Complaint (ECF 58, 78, 88, 89, 92, 110, 122), as follows:

(a) dismissing the Second Amended Complaint in its entirety for Plaintiff's failure to comply with Rule 8;

(b) dismissing with prejudice all of Plaintiff's claims against the State Bar and its committees or departments (except for Plaintiff's Twelfth and Thirteenth Causes of Action based only on Title IX), because these Defendants have Eleventh Amendment immunity;

(c) dismissing with prejudice all of Plaintiff's claims against the individual State Bar Defendants in their official capacity (except Plaintiff's Twelfth, and Thirteenth Causes of Action based only on Title IX and his Sixth and Seventh Causes of Action to the extent those claims may seek declaratory or injunctive relief), because these Defendants have Eleventh Amendment immunity;

(d) dismissing with prejudice the Sixth Cause of Action to the extent it seeks Federal Bar admission, as such relief is beyond this Court's jurisdiction;

(e) dismissing with prejudice Plaintiff's Fourteenth, Fifteenth, and Sixteenth Causes of Action under 18 U.S.C. §§ 241, 242, and 245, because there is no private right of action under those statutes;

(5) otherwise denying the moving Defendants' Motions to Dismiss without prejudice, including Defendant Gonzalez' Motion to Dismiss for insufficient service of process; Defendant Spiro's request for sanctions; and the individual State Bar Defendants Motion to dismiss based on quasi-judicial or qualified immunity;

(6) denying as moot Plaintiff's Motion to Dismiss (ECF 89); and

(7) granting Plaintiff thirty days from the date of the District Judge's order accepting the Report and Recommendation in which to file a Third Amended Complaint remedying the deficiencies detailed herein.

DATED: April 23, 2024

BRIANNA FULLER MIRCHEFF
UNITED STATES MAGISTRATE JUDGE

NOTICE

Reports and Recommendations are not appealable to the United States Court of Appeals for the Ninth Circuit, but may be subject to the right of any party to file objections as provided in the Local Civil Rules for the United States District Court for the Central District of California and review by the United States District Judge whose initials appear in the docket number. No notice of appeal pursuant to the Federal Rules of Appellate Procedure should be filed until the District Court enters judgment.